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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 03 142 50399 Office: NEBRASKA SERVICE CENTER Date: APR 25 2004

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is an automobile driving school. It seeks to employ the beneficiary permanently in the United States as a Polish-speaking driving instructor. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor. The director determined that the job requirements set forth on the labor certification do not require a skilled worker.

On appeal, counsel requests reconsideration of the petition under a different immigrant classification.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The alien labor certification, "Offer of Employment," (Form ETA-750, Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the educational, training, and experience requirements. In this case, Block 14 indicates that an applicant must have either six months experience in the job offered as a Polish-speaking driving instructor or six months experience in a related occupation as a driving instructor.[1]

The director denied the petition, finding that that the labor certification's specified minimum requirements of either six months experience in the job offered or six months experience in a related occupation do not conform to the statutory definition of a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act. The AAO concurs with the director's decision. The minimum requirement for the classification of skilled worker, as set forth on a labor certification, must be at least two years of training or experience. 8 C.F.R. §204.5(l)(3)(ii)(B).

On appeal, counsel does not challenge the director's interpretation of the ETA-750. He requests reconsideration under section 203(b)(3)(A)(iii) of the Act (box "g" of the Immigrant Petition for Alien Worker) which provides immigrant classifications for aliens as other workers requiring less than two years of training or experience. Counsel indicates that the confusion arose as a result of a typographical error.

There is, however, no provision in statute or regulation that requires CIS to re-adjudicate a petition under a different visa classification once a decision on the visa petition has been rendered. The appropriate remedy after the decision is rendered would be to file another petition with the proper fee and required documentation.

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[1] The labor certification application also required applicants to show proof of an Illinois driver training certificate. The director correctly noted that the petitioner did not provide evidence of the beneficiary's Illinois driver training certificate; however, since the immigrant visa petition was filed under an incorrect category, the director did not request evidence on this point nor adjudicated his decision based upon it.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.